reported but the Court (*per* Murray-Aynsley, C.J.) gave judgment as follows):—

"At the hearing one of several co-accused gave evidence on his own behalf which gravely implicated another of the co-accused. It was contended on behalf of the latter that this evidence should have been treated as evidence of an accomplice, and required the same degree of corroboration.

In English cases, in particular R. v. Barnes and Richards, it has been held on several occasions that it is not so and we consider that these cases are applicable in this Colony."

With respect we agree with and adopt that statement by the Singapore Court and we find support for that course in the case of *Davies v. Director of Public Prosecutions*[4] where Lord Simonds, L.C., referred to the rule that where a person who is an accomplice gives evidence on behalf of the prosecution it is the duty of the Judge to warn the jury that although they may convict upon his evidence it is dangerous to do so unless it is corroborated and observed that this rule "applies only to witnesses for the prosecution".

The truth of course, is that there is no rule of law which demands that in every case where an accused person gives evidence which tends to incriminate a co-accused the jury should be warned that it is dangerous to convict upon such evidence unless it is corroborated.

Whether or not such a warning should be given to the jury is not a matter of law. It is a matter to be decided in the light of the circumstances of each individual case. In some cases such a warning might not be necessary; in others as a matter of ordinary prudence such a warning would be imperative.

In the present case in our opinion there was no need for any such warning. Indeed it was only up to a point that the first appellant's evidence tended to incriminate the second and third appellants. It is true that it tended to incriminate them in something but if it was believed it was a complete defence not only to any charge of murder against himself but also against any charge of murder against the second appellant and any charge of abetment of murder in contravention of section 109 against the third appellant, or indeed the fourth appellant.

Appeal dismissed.

KHOR SEEK POK v. PUBLIC PROSECUTOR.

[A. Cr. J. (Rigby J.) November 8, 1957]

[Penang — Criminal Appeal No. 45 of 1957]

Criminal Procedure — Fine — "Liable on conviction to a fine of $10,000" — Whether mandatory — Dangerous Drugs Ordinance, 1952, s.6.

The appellant in this case was convicted of unauthorised possession of a quantity of raw opium contrary to the provisions of section 6 of the Dangerous Drugs Ordinance, 1952. The relevant words in that section are that a convicted person "shall be guilty of an offence against this Ordinance and liable on conviction to a fine of $10,000 or to imprisonment for a term not exceeding five years or to both such fine and imprisonment." The learned President sentenced him to a fine of $10,000 or 18 months' imprisonment in default of payment.

Held: the penalty of a fine of $10,000 provided under section 6 of the Ordinance is not mandatory. It is in fact the maximum penalty provided and the Court has discretion to impose a fine of any sum within the maximum amount of $10,000.

Fine reduced to $2,000.

Case referred to:—

(1) *Ng Chwee Puan v. R.* (1953) M.L.J. 86.

MAGISTRATE'S CRIMINAL APPEAL.

A. Jayadeva for the appellant.

F. G. Cooke (Federal Counsel) for the respondent.

Rigby J.: — The appellant in this case was convicted of unauthorised possession of a quantity of raw opium, contrary to the provisions of section 6 of the Dangerous Drugs Ordinance, 1952. He was sentenced to pay a fine of $10,000 or 18 months' imprisonment in default of payment. The maximum fine under section 6 of the Ordinance is, in fact, $10,000. No reason is given by the learned President as to why he imposed the maximum fine. It may well be, however, that he was of the opinion that having regard to the wording of section 6 he has no alternative but to impose that particular fine. The relevant words of section 6 are that a convicted person "shall be guilty of an offence against this Ordinance and liable on conviction to a fine of $10,000 or to imprisonment for a term not exceeding five years or to both such fine and imprisonment." Mr. Jayadeva, for the appellant, pointed out that in other penal sections of this Ordinance the fine specified in the section itself to which a person is liable on conviction is preceded by the words "not exceeding". In this section — section 6 — the words have been omitted. It may well be that the learned

President felt that having regard to the difference in the wording of the sections it was mandatory on him on conviction to impose a fine of $10,000. Mr. Jayadeva has referred, however, to the case of *Ng Chwee Puan v. Reg.*[1] In that case the question under consideration was the meaning of the words under a particular bye-law imposing a penalty where the bye-law itself provided that upon conviction the offender was liable to a "fine not exceeding $25 or in the case of a continuing offence to a fine of $10 for every day during which the offence is committed". The Magistrate there held that whilst he had a discretion as regards the imposition of the fine for the offence itself, as regards the continuing offence he had no discretion and that it was mandatory upon him to impose a fine of $10 a day for every day it continued. The learned Judge considered however, that the bye-law was imperfectly drafted and he held that the word "liable" contained no obligatory or mandatory connotation and there was, in fact, a discretion to impose a fine up to $10 a day for the continuing offence itself.

The learned Deputy Public Prosecutor concedes that the construction Mr. Jayadeva seeks to put upon the section is in fact the correct one and that the penalty provided of a fine of $10,000 is in fact a maximum penalty giving the Court a discretion to impose any fine within that maximum.

I am, of the opinion that the learned President clearly had a discretion to impose a fine of any sum within the maximum amount of $10,000.

The learned Deputy Public Prosecutor has conceded in this case that the fine of $10,000 in the particular circumstances of the case was excessive. I agree. Despite the fact that the quantity of raw opium involved was large, 17½ lbs. in all, it would seem on the facts of the case that the appellant was a carrier at most and not the principal person behind the offence itself. The appellant is a lorry driver, aged 22, with a wife and a small child. In the circumstances of the case I, therefore, reduce the fine to one of $2,000, or 18 months' imprisonment. I am informed by Mr. Jayadeva that the appellant is, in fact, in a position now to pay the sum of $1,000. I therefore direct that the sum of $1,000 be paid forthwith and the balance within 30 days from today.

Order accordingly.

Solicitors: *Jayadeva & Zahir.*

TEH YEW WHATT v. PUBLIC PROSECUTOR.

[A. Cr. J. (Smith J.) November 5, 1957]

[K. L. — Criminal Appeal No. 32 of 1957]

Juvenile — Sentence of imprisonment — Juvenile Courts Ordinance, 1947, s.40.

Penal Code, s.365 — Juvenile pleading guilty to charge under — Whether can be sentenced to imprisonment.

It is always desirable before imposing a sentence of imprisonment on a person below the age of 21 to consider the powers under section 40 of the Juvenile Courts Ordinance, 1947 and to call for a probation officer's report to establish the background of the person about to be sentenced.

In this case the appellant had pleaded guilty to and was convicted of an offence of kidnapping contrary to section 365 of the Penal Code. The learned Judge called for a probation officer's report and from it he was satisfied that the proper order in the case was that the appellant should be detained in a Henry Gurney School until he attained the age of 21 years.

MAGISTRATE'S CRIMINAL APPEAL.

R. R. Chelliah for the appellant.

H. S. Ong (Federal Counsel) for the respondent.

Smith J.: — The appellant in this case pleaded guilty to and was convicted of an offence of kidnapping contrary to section 365 of the Penal Code. He was sentenced by the learned President to a term of 3 years' imprisonment against which sentence he has now appealed.

The appellant was one of a gang which kidnapped and held to ransom a Chinese businessman. Five of the gang were arrested, all pleaded guilty, and were sentenced each to 3 years' imprisonment from the date of his arrest.

The appellant was the only one of those arrested under the age of 21 years. The learned President before passing sentence did not call for any report on the background of the appellant nor from his grounds of judgment does he appear to have considered whether or not this was an appropriate case for exercising the powers of the Court under section 40 of the Juvenile Courts Ordinance, 1947. It is always desirable before imposing a sentence of imprisonment on a person below the age of 21 to consider the powers under this section and to call for a Probation Officer's report to establish the background of the person about to be sentenced.

I accordingly called for a Probation Officer's report and from it I am satisfied that the proper Order in this case is that the appellant should be detained in a Henry Gurney School until he attains the age of 21 years.

Order accordingly.